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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

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SEP 17 2004

AZ CORP COMMISSION  
DOCUMENT CONTROL

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IN THE MATTER OF THE APPLICATION OF  
ACCIPITER COMMUNICATIONS, INC. TO  
EXTEND ITS CERTIFICATE OF CONVENIENCE  
AND NECESSITY IN MARICOPA COUNTY.

DOCKET NO.T-02847A-02-0641

PROCEDURAL ORDER

**BY THE COMMISSION:**

On August 22, 2002, Accipiter Communications, Inc. ("Accipiter") filed an Application with the Arizona Corporation Commission ("Commission") to extend its Certificate of Convenience and Necessity ("CC&N") to provide local exchange telephone service to an area in northwest Maricopa County, Arizona, near Lake Pleasant.

Qwest Corporation ("Qwest") requested intervention by motion filed August 29, 2002.

On December 17, 2002, Accipiter filed a letter stating that it had discussed with Qwest the possibility of negotiating a resolution of Qwest's concerns with the Application. The letter also stated that Accipiter agreed to toll the applicable time clock requirements.

On December 22, 2003, Qwest filed a Response to Accipiter's Application. Qwest indicated that it has resolved its issues and has agreed to transfer four sections of its service area to Accipiter.

On February 18, 2004, Qwest filed a letter renewing its intervention request and expressing support for approval of Accipiter's Application.

On April 1, 2004, a Procedural Order was issued granting Qwest intervention in this proceeding.

On May 12, 2004, Accipiter filed a Notice of Amendment of the Legal Description for the Requested Extension Area. Accipiter's Amendment to its Application indicated that it now seeks to include the parts of Qwest's service area that had previously been excluded so that its CC&N will cover the entirety of the Vistancia development that consists of approximately 7,100 acres in Peoria, Arizona.

1 On June 10, 2004, the Commission's Utilities Division Staff ("Staff") filed a letter stating that  
2 Accipiter's Amended Application filed on May 12, 2004 was deemed sufficient pursuant to A.A.C.  
3 R14-2-502.

4 On September 7, 2004, Staff filed its Staff Report in this matter recommending approval of  
5 the Amended Application subject to certain conditions.

6 IT IS THEREFORE ORDERED that Accipiter shall file its response, if any, to the Staff  
7 Report by October 1, 2004.

8 IT IS FURTHER ORDERED that a hearing in the above-captioned matter shall be held on  
9 October 21, 2004, at 10:00 a.m., or as soon thereafter as is practical, at the Commission's offices,  
10 1200 West Washington Street, Phoenix, Arizona.

11 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105,  
12 except that all motions to intervene must be filed on or before October 15, 2004.

13 IT IS FURTHER ORDERED that the Company shall provide public notice of the hearing in  
14 this matter, in the following form and style with the heading in no less than 12 point bold type and the  
15 body in no less than 10 point regular type:

16 **PUBLIC NOTICE OF HEARING ON APPLICATION BY**  
17 **ACCIPITER COMMUNICATIONS, INC. FOR**  
18 **EXTENSION OF ITS CERTIFICATE OF CONVENIENCE**  
19 **AND NECESSITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS**  
20 **SERVICE IN MARICOPA COUNTY, ARIZONA**  
21 **DOCKET NO. T-02847A-02-0641**

22 On August 22, 2002, as amended on May 12, 2004, Accipiter  
23 Communications, Inc. ("Accipiter") filed an application in the above-captioned docket  
24 seeking to extend its Certificate of Convenience and Necessity ("CC&N") to provide  
25 local exchange telecommunications service to an area in northwest Maricopa County,  
26 Arizona. The requested CC&N extension area is for a development in Peoria, Arizona  
27 known as Vistancia.

28 The application is available for inspection during regular business hours at the  
offices of the Commission in Phoenix, at 1200 West Washington Street, Phoenix,  
Arizona and at the Applicants' offices, [insert applicant's addresses].

The Commission will hold a hearing in this matter on **October 21, 2004, at 10:00 a.m.**, or as soon thereafter as is practical, at the Commission's offices, 1200 West Washington Street, Phoenix, Arizona. As a property owner or customer you may have the right to intervene in the proceeding. If you do not want to intervene, you may appear at the hearing and make a statement on your own behalf. Intervention shall be permitted to any person entitled by law to intervene and having a direct and

substantial interest in the matter. Persons desiring to intervene must file a written notice to intervene with the Commission, which motion should be sent to the Applicant or their counsel and to all parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of any party upon whom service of documents is to be made if different than the intervenor.
2. A short statement of the proposed intervenors interest in the proceeding (e.g., a customer of the Applicant, a shareholder or member of the Applicant, etc.)
3. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before October 15, 2004. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf. However, you will not receive any further notice of the proceeding unless requested by you.

If you have any questions or concerns about this application or have any objections to its approval, or wish to make a statement in support of it, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000 or appear at the hearing and make comment.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator, voice phone number 602/542-3931. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Accipiter Communications, Inc. shall mail to all property owners in the affected service area a copy of this notice by first-class U.S. Mail, to begin as soon as possible and to be completed on or before October 1, 2004.

IT IS FURTHER ORDERED that Accipiter Communications, Inc. shall also publish the above-described notice in a newspaper of general circulation in its service area by October 1, 2004.

IT IS FURTHER ORDERED that Accipiter Communications, Inc shall file certification of mailing and publication as soon as practical after the mailing/publication has been completed, but no later than October 15, 2004.

1 IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing/publication,  
2 notwithstanding the failure of an individual property owner or customer to read or receive the notice.

3 IT IS FURTHER ORDERED that the applicable time clock requirements shall be tolled an  
4 additional 30 days to allow sufficient time for mailing/publication of the notice, hearing, and  
5 preparation of a Recommended Opinion and Order.

6 IT IS FURTHER ORDERED that the ex parte rule (A.A.C. R14-3-113-Unauthorized  
7 Communications) applies to this proceeding as the matter is now set for public hearing.

8 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive  
9 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

10 DATED this 17<sup>th</sup> day of September, 2004.

11 

12 DWIGHT D. NODES  
13 ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE

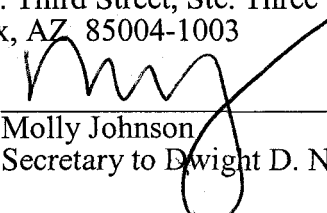
14 Copies of the foregoing mailed/delivered  
this 17<sup>th</sup> day of September, 2004 to:

15 Jeffrey W. Crockett  
16 SNELL & WILMER  
17 One Arizona Center  
Phoenix, AZ 85004  
Attorneys for Accipiter Communications, Inc.

Ernest Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

18 Timothy Berg  
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20 3003 North Central Avenue, Ste. 2600  
Phoenix, AZ 85012-2913  
Attorneys for Qwest Corporation

ARIZONA REPORTING SERVICE  
2627 N. Third Street, Ste. Three  
Phoenix, AZ 85004-1003

By:   
Molly Johnson  
Secretary to Dwight D. Nodes

21 Christopher Kempley, Chief Counsel  
22 ARIZONA CORPORATION COMMISSION  
23 Legal Division  
1200 West Washington  
Phoenix, AZ 85007